Unofficial Copy C3 2004 Regular Session 4lr0383 CF 4lr0377

#### (PRE-FILED)

By: **Senator Middleton** Requested: August 4, 2003

Introduced and read first time: January 14, 2004

Assigned to: Finance

#### A BILL ENTITLED

### 1 AN ACT concerning

# 2 Regulation and Acquisition of Nonprofit Health Service Plans

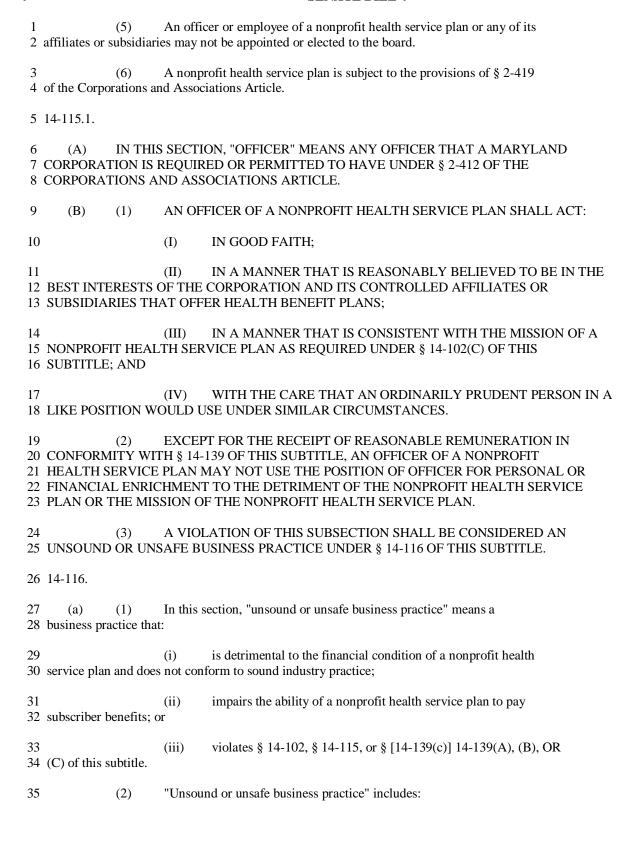
- 3 FOR the purpose of extending the statute of limitations for a certain time period for
- 4 certain criminal violations under the Insurance Article; altering certain
- 5 provisions of law relating to the regulation and acquisition of nonprofit health
- 6 service plans; requiring certain board members of a nonprofit health service
- 7 plan to act in a manner consistent with the mission of a nonprofit health service
- 8 plan; prohibiting certain board members and officers from receiving certain
- 9 personal or financial enrichment to the detriment of the nonprofit health service
- plan or its mission; including as a principal function of a board of a nonprofit
- health service plan the consideration of an independent valuation of a nonprofit
- 11 health service plan the consideration of an independent variation of a nonprofit
- health service plan prior to making a certain other consideration; specifying the
- manner in which certain officers of a nonprofit health service plan must act; providing that a violation of certain provisions of this Act is an unsound and
- providing that a violation of certain provisions of this Act is an unsound and unsafe business practice; altering a certain provision of law relating to unsound
- and unsafe business practices; authorizing the Insurance Commissioner to
- impose a certain civil penalty against certain officers or directors who fail to
- impose a certain error penarty against certain officers of directors who fair
- take appropriate action in response to a certain warning; altering certain
- 19 provisions of law relating to certain actions by an officer, director, or employee of
- a nonprofit health service plan; requiring that an application for acquisition of a
- 21 nonprofit health entity include a certain valuation of the nonprofit health entity
- and a certain antitrust analysis; specifying that a certain acquisition is not in
- 23 the public interest unless certain steps are taken to ensure that certain assets
- are spent in a certain manner; prohibiting a certain regulating entity from
- 25 making a certain determination unless certain considerations are made;
- defining a certain term; and generally relating to the regulation and acquisition
- of nonprofit health service plans.
- 28 BY repealing and reenacting, without amendments,
- 29 Article Courts and Judicial Proceedings
- 30 Section 5-106(a)
- 31 Annotated Code of Maryland
- 32 (2002 Replacement Volume and 2003 Supplement)

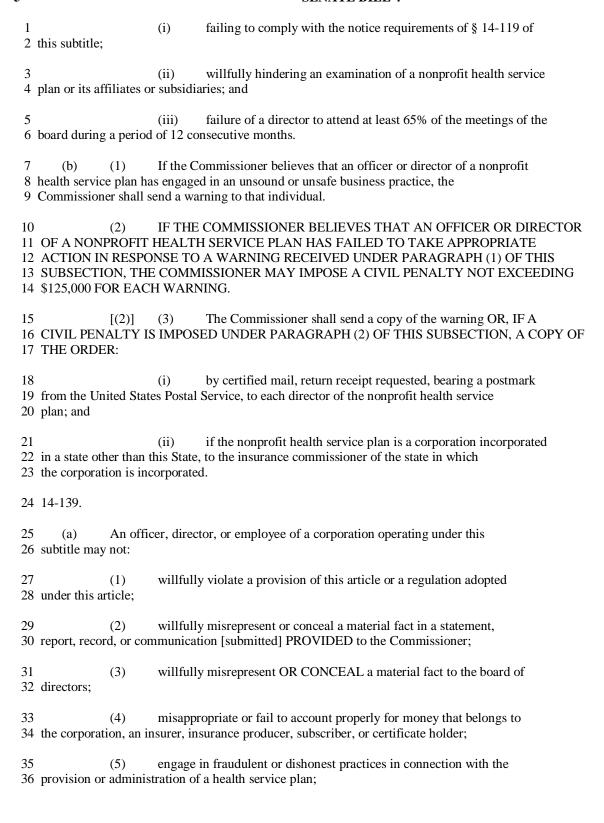
31 14-115.

2	SENATE BILL 4
1 2 3 4 5	BY adding to Article - Courts and Judicial Proceedings Section 5-106(z) Annotated Code of Maryland (2002 Replacement Volume and 2003 Supplement)
6 7 8 9 10	BY repealing and reenacting, with amendments, Article - Insurance Section 14-115(c), 14-116(a) and (b), and 14-139(a) Annotated Code of Maryland (2002 Replacement Volume and 2003 Supplement)
11 12 13 14 15	BY adding to Article - Insurance Section 14-115.1 Annotated Code of Maryland (2002 Replacement Volume and 2003 Supplement)
16 17 18 19 20	BY repealing and reenacting, with amendments, Article - State Government Section 6.5-201(b) and 6.5-301(b) and (e) Annotated Code of Maryland (1999 Replacement Volume and 2003 Supplement)
21 22	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:
23	Article - Courts and Judicial Proceedings
24	5-106.
25 26	(a) Except as provided by this section, a prosecution for a misdemeanor shall be instituted within 1 year after the offense was committed.
	(Z) A PROSECUTION FOR A MISDEMEANOR OFFENSE UNDER TITLE 14 OF THE INSURANCE ARTICLE SHALL BE INSTITUTED WITHIN 3 YEARS AFTER THE OFFENSE WAS COMMITTED.
30	Article - Insurance

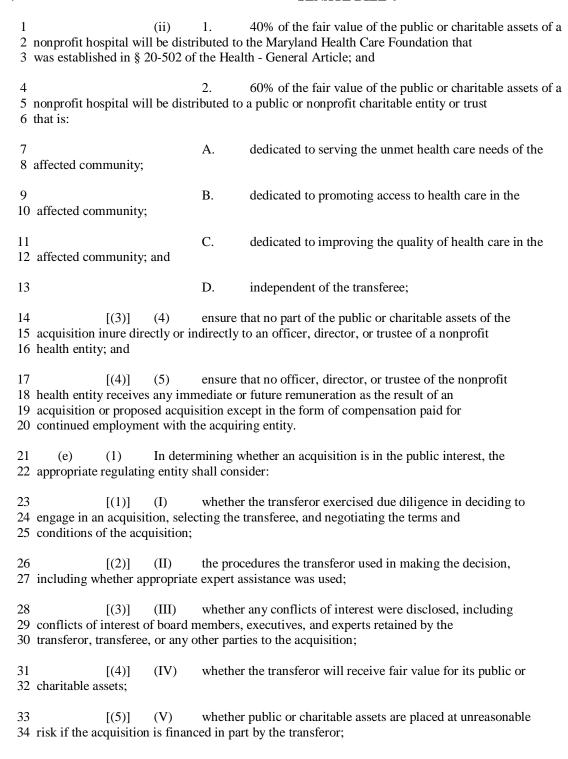
32 (c) (1) The business and affairs of a nonprofit health service plan shall be 33 managed under the direction of a board of directors.

1 2	(2)	(I)	The boa	ard and its individual members are fiduciaries and shall
3		[(i)]	1.	in good faith;
	interests of the corpo health benefit plans;	[(ii)] ration and	2. d its contr	in a manner that is reasonably believed to be in the best rolled affiliates or subsidiaries that offer
9	CONSISTENT WIT	Ĥ THE M	ISSION	[in a manner that is reasonably believed to be in fit mission] IN A MANNER THAT IS OF A NONPROFIT HEALTH SERVICE PLAN AS THIS SUBTITLE; and
11 12	position would use u	[(iv)] inder simi	4. dar circu	with the care that an ordinarily prudent person in a like mstances.
15	FINANCIAL ENRIG	CHMENT	RS MAY	T IN CONFORMITY WITH THIS SECTION, THE BOARD AND NOT USE BOARD MEMBERSHIP FOR PERSONAL OR E DETRIMENT OF THE NONPROFIT HEALTH SERVICE ONPROFIT HEALTH SERVICE PLAN.
17	(3)	The prin	ncipal fur	nctions of the board shall include:
18 19	nonprofit mission es	(i) tablished		g that the corporation effectively carries out the 14-102(c) of this subtitle;
20 21	performance;	(ii)	selectin	g corporate management and evaluating its
22 23	other resources are s	(iii) ufficient		g to the extent practicable that human resources and orporate objectives;
24 25	nominating and selec	(iv) cting suita		to the provisions of subsection (d) of this section, idates for the board; [and]
26 27	including an annual	(v) evaluation		hing a system of governance at the board level, d performance; AND
30 31	UNDER TITLE 6.5	OF THE IS GIVE	VICE PL STATE (	E CONSIDERING ANY BID OR OFFER TO ACQUIRE THE LAN AND TO CONVERT TO A FOR-PROFIT ENTITY GOVERNMENT ARTICLE, ENSURING THAT ADEQUATE INDEPENDENT VALUATION OF THE NONPROFIT
	(4) mission of the nonpr SUBTITLE.			the board shall demonstrate a commitment to the plan AS REQUIRED BY § 14-102(C) OF THIS





1 2	14-125 of thi	(6) is subtitle		fail to produce records or allow an examination under §
3		(7)	willfully	fail to comply with a lawful order of the Commissioner.
4				Article - State Government
5	6.5-201.			
6	(b)	An appl	ication sh	nall include:
7		(1)	the name	e of the transferor;
8		(2)	the name	e of the transferee;
9		(3)	the name	es of any other parties to the acquisition agreement;
10		(4)	the term	s of the proposed acquisition, including the sale price;
11		(5)	a copy o	of the acquisition agreement;
	independent [and]	(6) expert of		ial and community impact analysis report from an ant that addresses the criteria in § 6.5-301 of this title;
			IAT WAS	DEPENDENT VALUATION OF THE NONPROFIT HEALTH S OBTAINED PRIOR TO THE CONSIDERATION OF ANY BID OR HEALTH CARE ENTITY;
18 19	AND	(8)	AN AN	TITRUST ANALYSIS PREPARED BY AN APPROPRIATE EXPERT;
20		[(7)]	(9)	any other documents related to the acquisition.
21	6.5-301.			
22 23	(b) been taken t		isition is	not in the public interest unless appropriate steps have
24		(1)	ensure tl	hat the value of public or charitable assets is safeguarded;
	SPENT IN A		IER THA	E THAT THE VALUE OF PUBLIC OR CHARITABLE ASSETS IS T CORRESPONDS WITH THE POTENTIAL RISK ASSOCIATED
28		[(2)]	(3)	ensure that:
31		ealth Car		the fair value of the public or charitable assets of a nonprofit maintenance organization will be distributed to the tion that was established in § 20-502 of the Health -



	- '	rse effect on tl	whether the acquisition has the likelihood of creating a ne availability or accessibility of health care services in
4 5	- \	7)] (VII) community w	whether the acquisition includes sufficient safeguards to ensure vill have continued access to affordable health care; and
6 7	[(8 fair value.	B)] (VIII)	whether any management contract under the acquisition is for
10 11	SUBSECTION DUE DILIGEN	UE DILIGEN , THE APPRO ICE WAS EX	TERMINING WHETHER A HEALTH CARE ENTITY HAS ICE AS REQUIRED UNDER PARAGRAPH (1)(I) OF THIS DPRIATE REGULATING ENTITY MAY NOT DETERMINE THAT ERCISED UNLESS THE HEALTH CARE ENTITY CONSIDERED SITION, INCLUDING WHETHER AN ACQUISITION:
13		(I)	WOULD RESULT IN DISECONOMIES OF SCALE; OR
14		(II)	WOULD VIOLATE FEDERAL OR STATE ANTITRUST LAWS.
15 16	SECTION June 1, 2004.	2. AND BE IT	FURTHER ENACTED, That this Act shall take effect